

ACQUISITION REFORM TRAINING MODULE
Implementing Changes to Contract Award & Follow Up

- Establishing & Using Task Orders
- Establishing & Using Task Orders Exercise
- **Debriefing & Other Contracting Process Changes**
- Debriefing & Other Contracting Process Changes Exercise
- Changes in Protest, Dispute & Appeals Rules
- Changes in Protest, Dispute & Appeals Rules Exercise

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Debriefing & Other Contracting Process Changes

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Welcome to Debriefing & Other Contracting Process Changes.

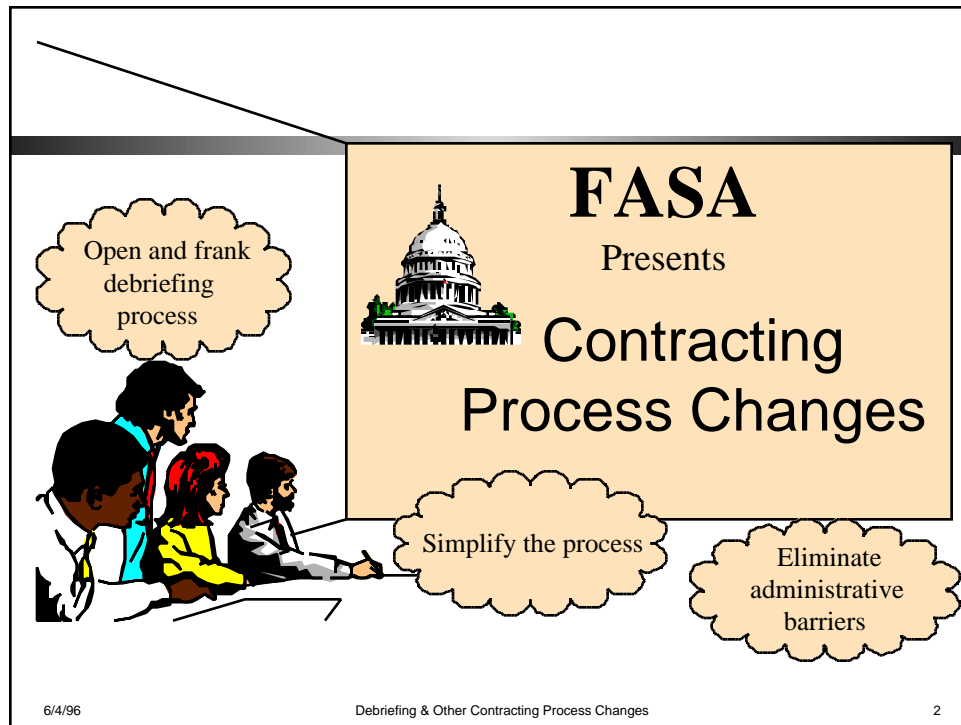
This lecture emphasizes debriefing and outlines various changes to the contracting process brought about by the Federal Acquisition Streamlining Act of 1994.

Its purpose is to highlight significant changes and their resultant impacts on the contracting process.

It discusses the skills that the workforce must master to take advantage of the acquisition reform initiatives.

It illustrates aspects of several of the Acquisition Reform Guiding Principles, especially empowerment (#1), reducing cycle time (#3), world class solicitations (#7), and best value (#8).

It is followed by a practical exercise that reinforces the major teaching points.



There are significant benefits that can be reaped by the acquisition workforce thanks to these changes.

Use of the open and frank debriefing procedures will promote better understanding between the Government and industry, facilitating better contractor proposals in future buys and reducing the possibility of protests.

Some of the changes simplify and shorten the contracting process, allowing Government agencies to reap resource savings and to do more with less.

Others reduce or eliminate administrative barriers in some fashion, allowing both Government and industry personnel the opportunity to make smarter business decisions.

These changes also empower contracting officers with a great deal of flexibility, and encourage them to make decisions based on good business sense and best value.

Contract Award - FAR Case 94-701

**A variety of provisions
that impact
presolicitation,
solicitation, evaluation,
and award**



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Debriefing & Other Contracting Process Changes

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FAR Case 94-701, Contract Award Implementation, is the basis for this presentation.

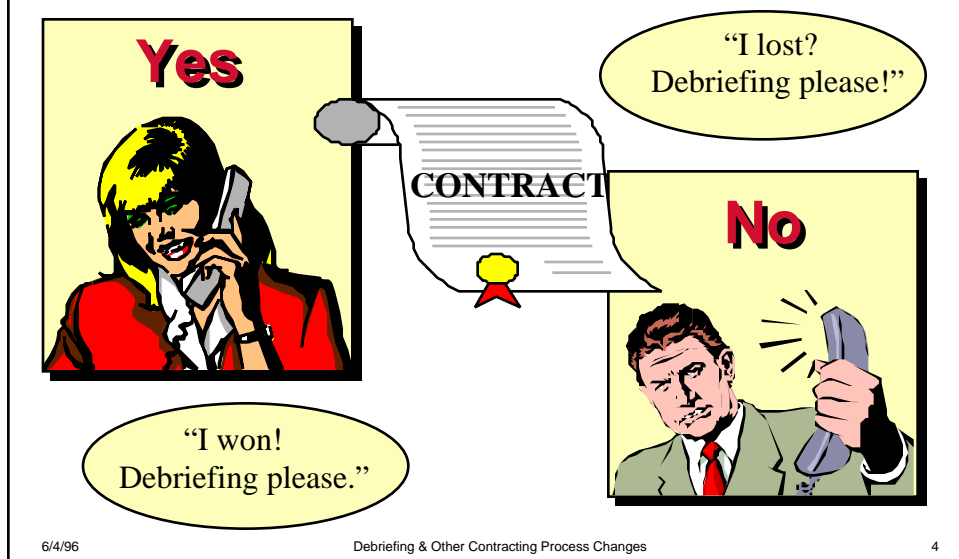
It presents an omnibus rule that implements a variety of FASA provisions that impact throughout the contracting process.

Some of these changes help streamline the process; some speak to industry reform concerns; and some are present simply because FASA provided an opportunity for lawmakers to change something - regardless of the instrument.

Regardless of the impetus for change, contracting professionals need to be aware of the changes in order to:

- Acquire or sharpen their debriefing skills.
- Apply the changes in the contracting process.
- Comply with congressional guidance.

Award Notification - Debriefing



Certainly the most significant set of changes in this case involves the debriefing of offerors.

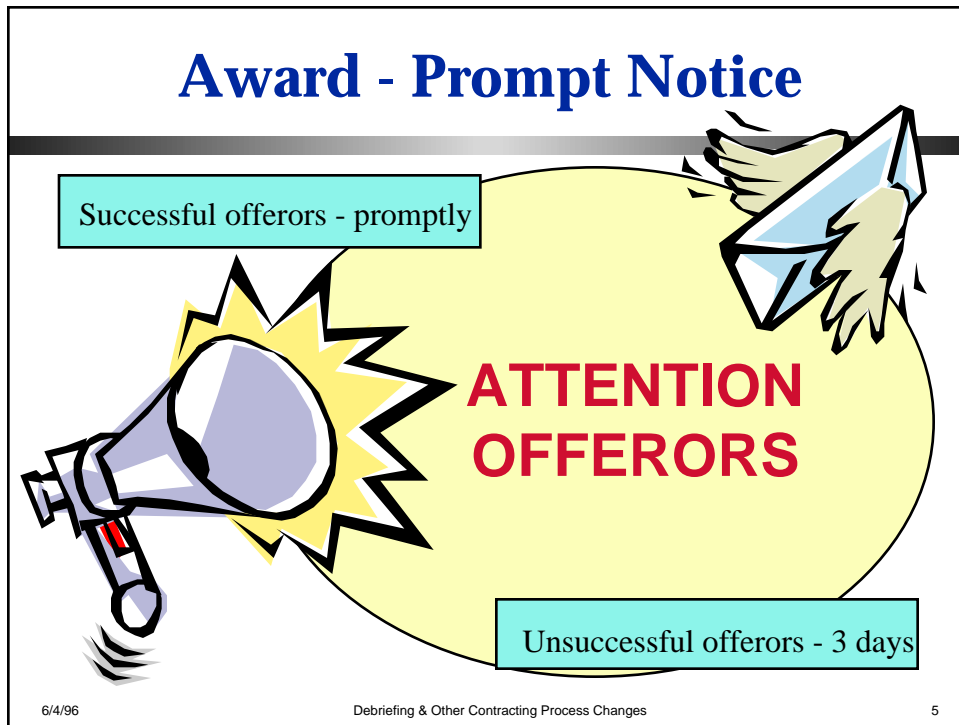
The requirement to disclose significant amounts of source selection data is new to most agencies. It facilitates much more open and frank discussions between the Government and industry. The Government hopes that this will lead to better proposals on future procurements.

It also leads to greater understanding on the part of the contractor as to the Government's decision process. As mentioned earlier, a better understanding of the process may reduce the number of protests.

A few federal activities have been using a more open debriefing process over the last few years. However, these procedures will be new to most agencies. With these new procedures, any contractor on any competitively negotiated buy can request a debriefing. If a valid request for debriefing is made by an offeror, the contracting officer must debrief that offeror.

The discussion of the debriefing process is found at the revised FAR Subpart 15.10.

(15.1001)



Contracting officers shall award contracts with reasonable promptness to the successful offeror.

Contracting officers must also notify unsuccessful offerors within three days of contract award. A day means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday.

This does not apply to offerors who have already received pre-award notification that their offers will not receive further consideration.

Notice can be made electronically or in writing.

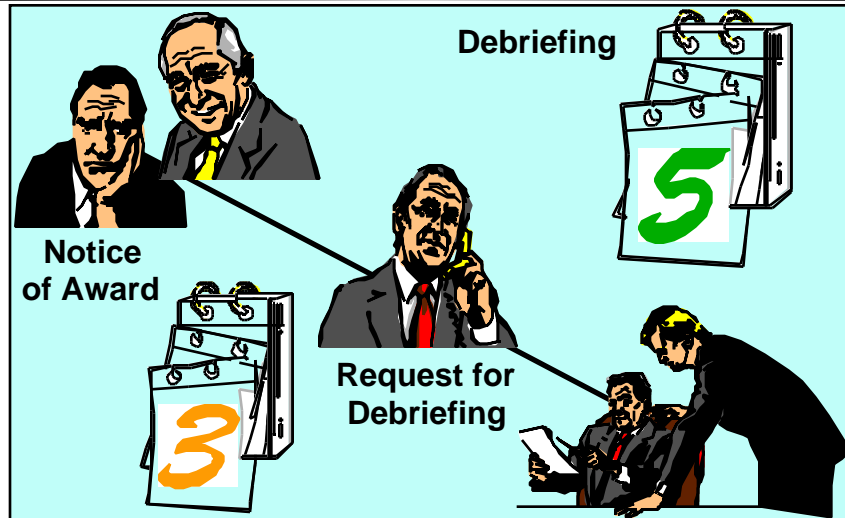
The notice consists of:

- Number of proposals solicited.
- Number of proposals received.
- Name and address of each successful offeror.
- Items, quantities and unit prices.
- Reason offeror's proposal not accepted.

It also pertains to SAP, upon offeror request.

(15.1002)

Award - Debriefing



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Offerors, both successful and unsuccessful, may request debriefings whenever the award is on the basis of competitive proposals, whether or not :

- The contracting officer conducted discussions.
- The award was on price and price-related factors alone.

Debriefings should be requested within three days of notice of award.

When practicable, requests received after three days should be accommodated.

To the maximum extent practicable, debriefings should occur within five days of the request.

This opens up the process to any participating contractor who desires to increase his understanding of the process or improve future proposals.

It also allows contractors to get a clearer picture of the evaluation and award process.

(15.1004)

Award - Debriefing

Contracting officer
conducts briefing
supported by
technical team
Conducted in any
format Contracting
Officer desires



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Debriefing & Other Contracting Process Changes

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The contracting officer should conduct the debriefing supported by individuals actually responsible for the evaluations.

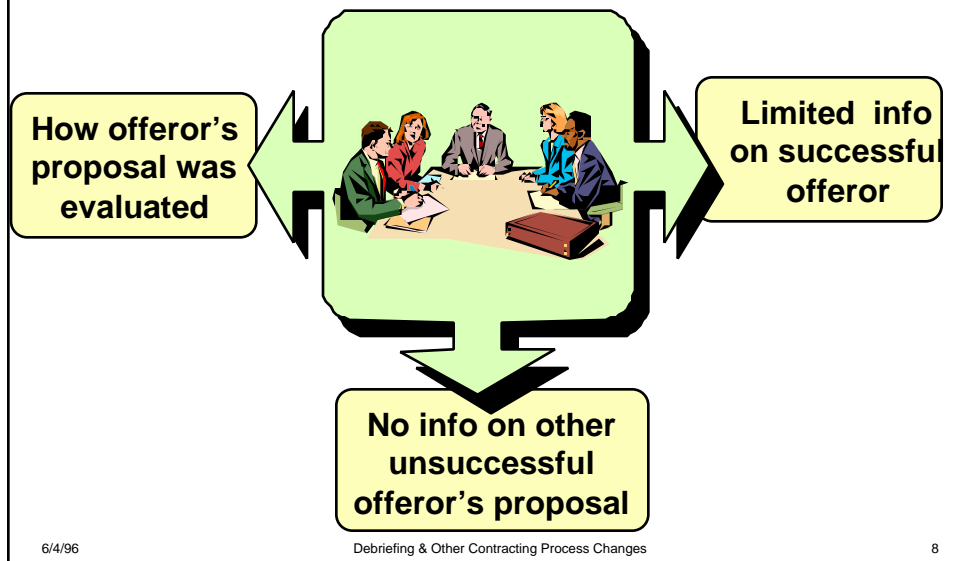
This ensures that the knowledgeable people who actually worked on the acquisition are available to answer questions.

If the contracting officer is unavailable, another agency representative may be designated on a case-by-case basis, with the approval of an individual one level above the contracting officer.

Debriefings are conducted in any format the contracting officer desires. They can be electronic or any other method acceptable to the contracting officer.

(15.1004)

Award - Debriefing



While this process does encourage frank and open discussions and a great deal of information can be released to contractors, there are certain limitations:

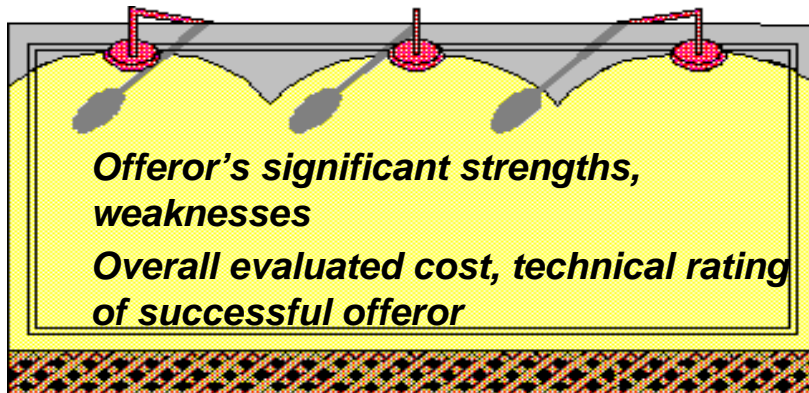
- The offeror is debriefed only on how the Government evaluated its proposal.
- If the unsuccessful offeror, limited information on the successful proposal is provided.
- No information on any other unsuccessful offeror's proposal is provided.

These limitations protect the competition-sensitive and proprietary information contained in the proposals.

That still leaves plenty of information available - as we will see in the next few slides.

(15.1004)

Award - Debriefing



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Debriefing & Other Contracting Process Changes

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Previously, the FAR required only that the Government share its evaluation of the significant weaknesses or deficiencies in the offeror's proposal.

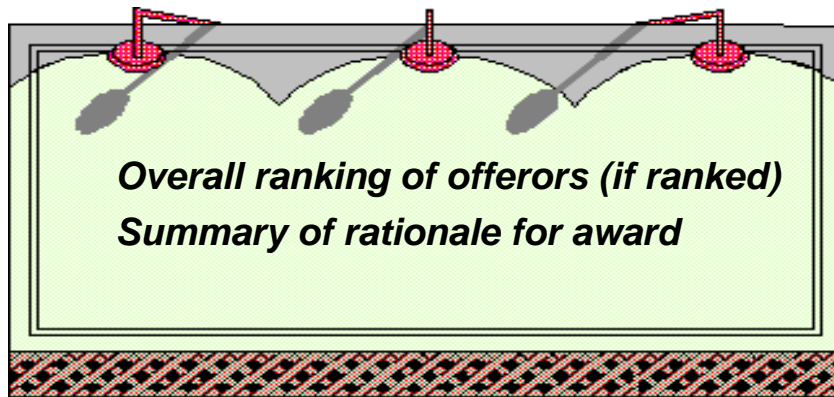
Within the limitations previously mentioned, the Government now must provide, as a minimum, information on:

- or deficiencies, if applicable, AND
- successful and debriefed offerors.

Note that the language says "as a minimum". This allows the contracting officer quite a bit of latitude concerning the amount and depth of evaluation data given to the offeror.

(15.1004)

Award - Debriefing



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Additionally, the debriefing material should include, as a minimum:

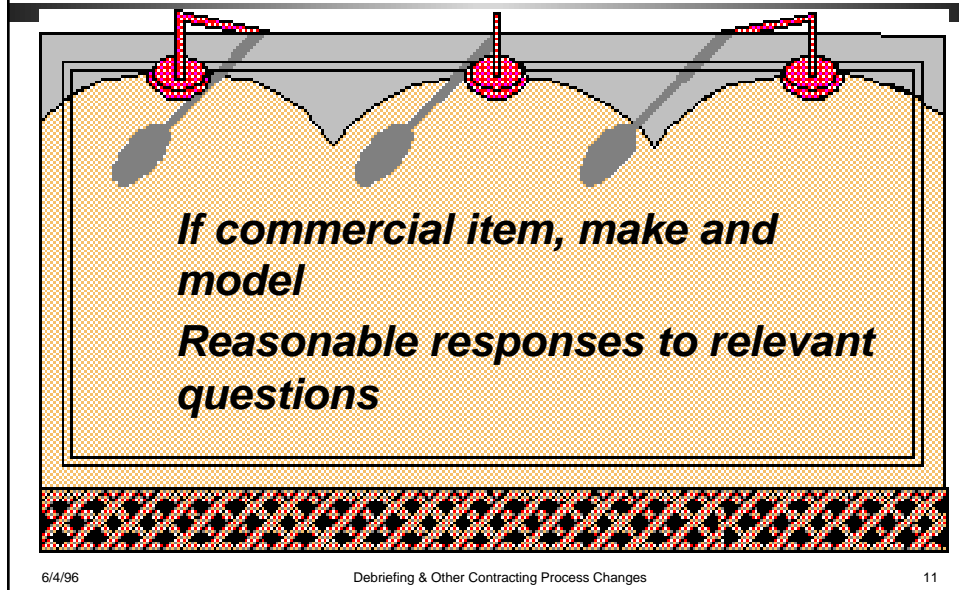
- The overall ranking of all offerors when any ranking was done.
- A summary of the rationale for award.

This gives contractors additional data that allows them to understand why their proposal was not selected, and how they can be better prepared in the future.

For a major item buy, a good place to find a summary of the rationale for award is the Source Selection Authority's decision memo.

(15.1004)

Award - Debriefing



Finally, the debriefing information will also include, as a minimum,

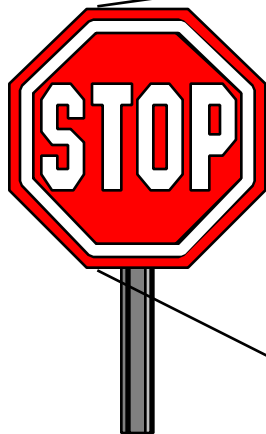
- item to be delivered by the successful offeror.
- source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

Again, this information gives the offeror more understanding of the evaluation and award process.

It also allows an offeror the opportunity to ask questions and provide feedback to the process.

(15.1004)

Award - Debriefing



Taboos

Point-by-point
comparisons with
other offerors
Information exempt
from the Freedom
of Information Act

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Debriefing & Other Contracting Process Changes

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In order to protect the confidentiality of an offeror's proposal, the debriefing shall not provide point-by-point comparisons of the debriefed offeror's proposal with those of other offerors.

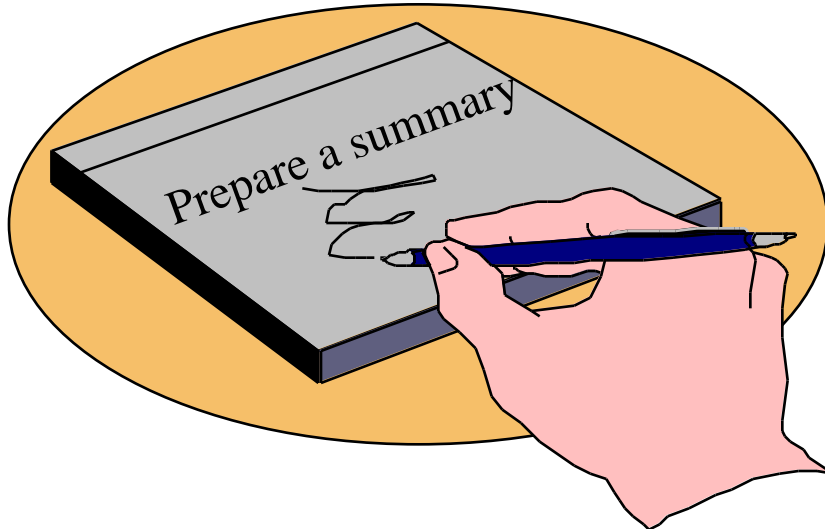
The Government cannot reveal any information exempt from release under the Freedom of Information act, such as:

1. Trade secrets.
2. Privileged or confidential manufacturing processes and techniques.
3. Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information.

Additionally, the names of individuals providing reference information about an offeror's past performance shall not be released.

(15.1004)

Award - Debriefing



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Debriefing & Other Contracting Process Changes

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The contracting officer must prepare an official summary.

It may take the form of a memorandum for record.

Include a copy of the script, if any, and a list of questions received and how they were answered.

This provides a source of information that can be used in the future to:

- Answer inquiries.
- Support protest files.
- Provide material for “lessons learned”.

(15.1004)

Award - Debriefings



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Debriefing & Other Contracting Process Changes

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Remember, this change facilitates frank and open discussions leading, hopefully, to better proposals on future procurements.

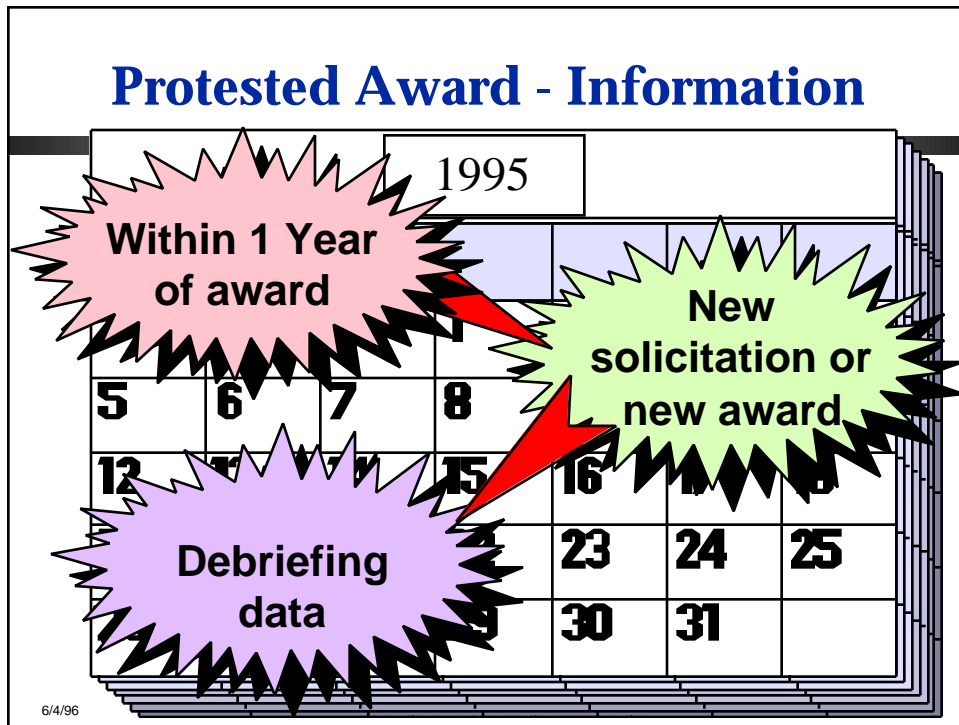
It allows offerors to gain a better understanding of the process.

Government personnel need to be comfortable with briefing the impact of past performance and other non-cost factors on the award process.

Individuals who never performed debriefings before, e.g. Simplified Acquisition Procedures buyers or buyers for spares or services, must be prepared to respond to offeror debriefing requests.

Contracting officers should be thinking about the debriefing requirement throughout the contracting process, and budget plenty of time for preparation of and presentation of debriefings.

(Subpart 15.10)



This circumstance illustrates the importance of a clear accurate debriefing memorandum.

If within one year of contract award, a protest causes the agency to issue a new solicitation or request for BAFOs, the agency must provide the following information from the debriefing to all prospective offerors;

- debriefing.
- the original offerors.

The purpose of this is to ensure that an offeror debriefed is not an offeror with an unfair competitive advantage.

(15.1004)

Protested Award



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Debriefing & Other Contracting Process Changes

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Contracting officers can comply with this policy by making available to all offerors an official written summary of any of the actual debriefings (after expunging any proprietary data).

They can provide this information with the new solicitation or simply notify all offerors that the information is available at a specific location.

The purpose of all this is to ensure that an offeror debriefed is not an offeror with an unfair competitive advantage.



While the lion's share of the Contract Award Implementation case had to do with debriefing, there were also a myriad of changes that had impacts all along the contracting process.

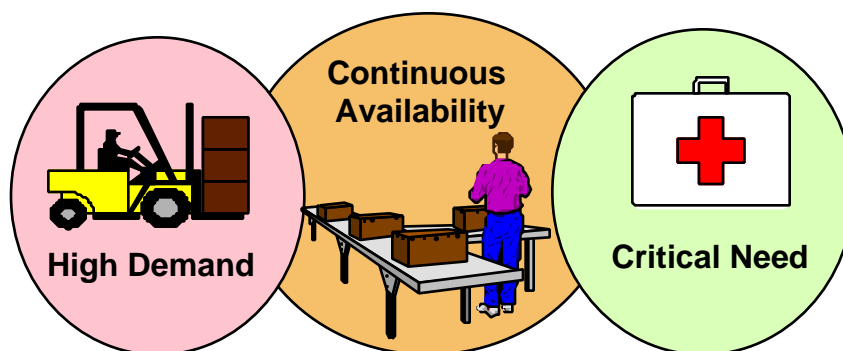
Let's take a walk through the FAR, highlighting those changes and discussing the impacts.

The first group of changes are found at FAR Subparts 6.2 and 6.3, and deal with the requirement for competition.

Presolicitation - Competition Requirements

Full and Open Competition After the Exclusion of Sources

Three new reasons for excluding a source to establish or maintain an alternative source



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Debriefing & Other Contracting Process Changes

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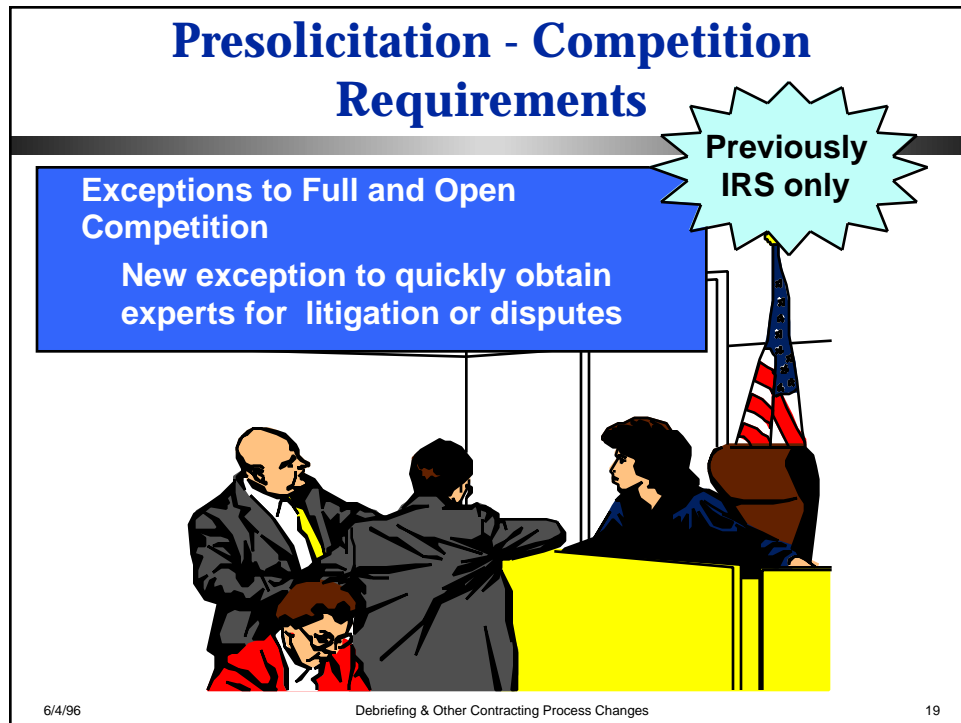
This change adds three new reasons for excluding a source under FAR **(6.202)**, establishing or maintaining alternative sources. The new reasons are to ensure the continuous availability of a reliable source of supplies or services to satisfy projected needs based on a history of high demands to satisfy a critical need for medical, safety, or emergency supplies.

For instance, this allows quick response to national disasters, such as floods, earthquakes or hurricanes.

The Government is getting out of the business of buying and warehousing large stocks of supplies for contingencies. This change facilitates that initiative and supports a lean logistics support capability.

NOTE: The old reasons (still valid) are to increase/maintain competition to reduce overall costs, interest of national defense (have contractor available for national emergency or mobilization), and interest of national defense for maintaining essential engineering, R&D capability by educational, nonprofit or FFRDC.

(6.202)



This change adds another circumstance permitting other than full and open competition. The new exception is services of an expert for a current or reasonably foreseeable litigation or dispute, and is found at FAR **(6.302-3)**.

This allows a Government agency to quickly obtain experts for current or anticipated litigation or disputes.

The expert may be obtained to assist the Government in preparation of presentation of a case, to participate in any part of an ADR process, or to facilitate an ADR process.

This exception allows the Government to essentially name request a neutral mediator or arbitrator for ADR who is agreeable to both parties.

This situation is also exempted from the synopsis requirement in FAR Subpart 5.2.

This does not, however, allow us to disregard other policies and procedures, such as those governing conflicts of interest, inherently government functions, or other service contracting policies in FAR Part 37.


The overall effect is to provide the Government much more flexibility in the disputes process.

(5-202(a)(15)) and (6-302.3)

Presolicitation - Competition Requirements

Exceptions to Full and Open Competition

Defines which statutes may be used to authorize or require acquisition from specific non-Federal entity



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This highlight is a change to FAR 6-302.5, Authorized or Required by Statute.

It expands the limitations for using this exception to full and open competition.

If a law is enacted post-FASA that directs an award to a contractor, we must ignore that direction unless the law specifically; identifies the contractor, references 10 USC 2304(j) for armed services acquisitions or section 303(h) of the Federal Property and Administrative Act of 1949 for civilian agency acquisitions and states that the award shall be made “in contravention of the merit-based selection procedures” in those statutes.

Exceptions are statutory direction under a pre-FASA contract and statutory requirements to contract with the National Academy of Sciences.

This is purely an anti-pork barrel provision, designed to do away with the practice of directing sole source procurements through hidden, obscure provisions of law.

(6-302.5)

Presolicitation - Competition Requirements



Justifications for Other Than Full and Open Competition

In absence of Competition Advocate, officials who can approve justification for proposed contract over \$1 million can approve proposed justification for under that amount

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This amends FAR 6.304, allowing the senior procurement executive or head of the agency to sign the justification in the Competition Advocate's absence. While this is a minor change, it does have the effect of speeding up the contracting process .

(6-304)

Solicitation Provisions - 52.215-16



This highlights the major change to solicitations provisions.

When award will be made on the basis of competitive proposals, determine whether to incorporate the award clause at FAR 52.215-16 with or without Alternative II.

Use the basic clause if discussions are inevitable, e.g., a cost-reimbursable contract contemplated.

Alternative II allows the contracting officer to reserve the right to award without discussions. One of the advantages is that proposals are likely to be more realistic, thus shortening the procurement process.

Previously, the right to award without discussions had been greatly limited in case law. The Comptroller General only allowed award without discussions when:

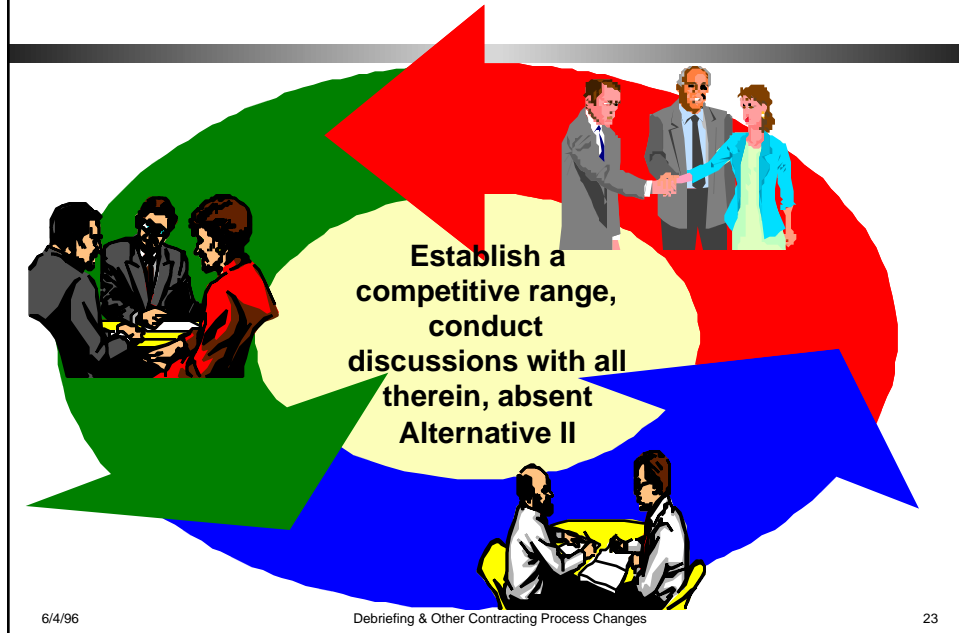
- The RFP provided for award to the lowest price offer in the competitive range.
- The contracting officer had no reason to believe that discussions would yield a better price.

Now, you can award without discussions even in best value competitions and trade off the costs of conducting discussions against the possibility of seeing some slight improvement in BAFO prices.

For DoD, NASA and CG, new Alt II replaces previous Alt III. (Previous Alt II is in now in the basic provision).

(15.407 and 52.215-16)

Basic 52.215-16 - With Discussions



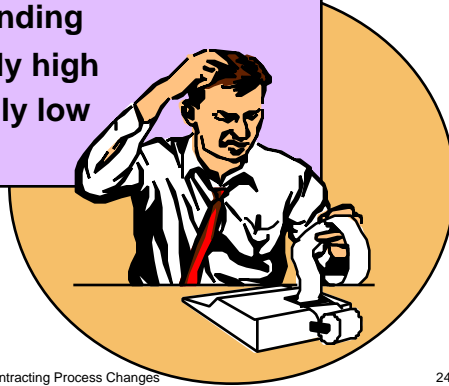
Let's take a look at the impact of this clause further along in the contracting process.

In the evaluation process, if the RFP included FAR **(52.215-16)** absent Alternate II, the contracting officer establishes a competitive range and conducts discussions with all offerors in that range.

(52.215-16)

52.215-16 - Alternative II Exceptions

If Alternative II incorporated, determine if discussions necessary
no proposal technically acceptable
possible misunderstanding
all prices unreasonably high
all prices unrealistically low



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Debriefing & Other Contracting Process Changes

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The contracting officer may use Alternative II when he believes that discussions may not be necessary.

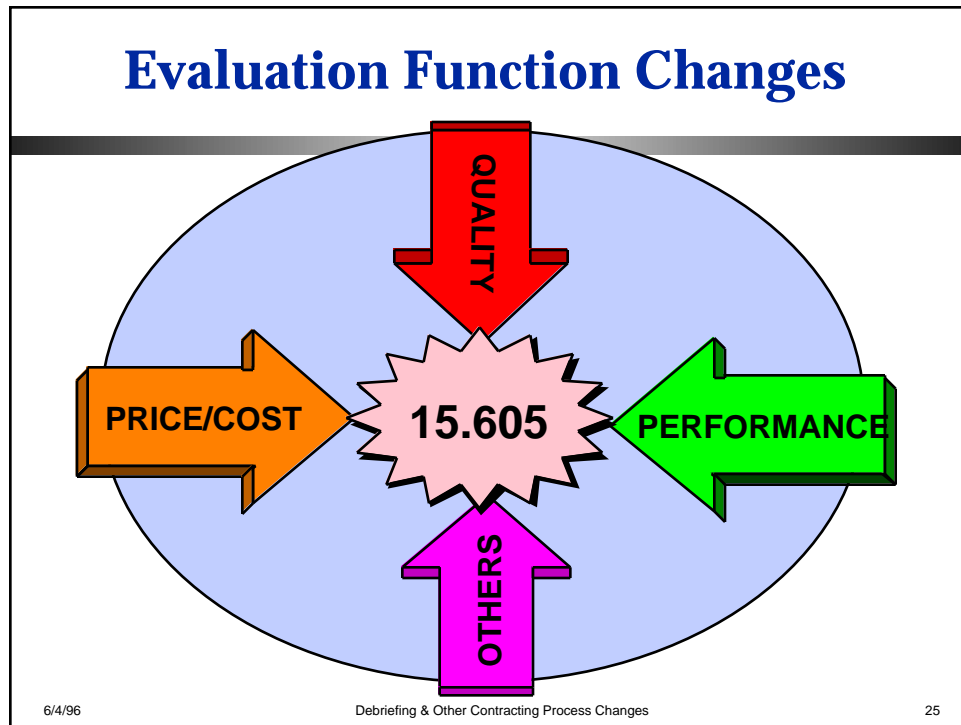
However, there may be occasions when Alternate II was incorporated, but the contracting officer may decide that discussions are necessary.

While the FAR is silent as to the circumstances, potential reasons may be as follows:

- proposals are technically acceptable, because there is reason to believe that other offerors misunderstood some critical aspect of the government requirement.
- prices or current market prices for like deliverables.
- The lowest offered price appears to be unrealistic when compared to the government estimate (cost estimating mistake?).
- All prices are unrealistically low.

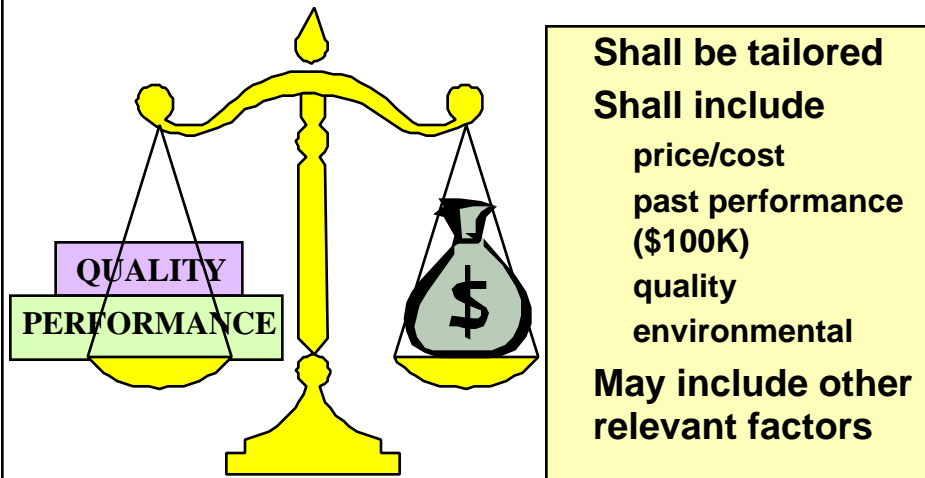
This gives maximum flexibility to the contracting officer.

(52.215-16)



The following charts illustrate several significant changes to the evaluation function, brought about by this rule. The majority of the changes are found in FAR (15.605).

Evaluation Factors and Subfactors



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Debriefing & Other Contracting Process Changes

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The revised FAR states that factors and subfactors shall be tailored to each acquisition and all significant factors and subfactors shall appear in the solicitation. This saves process time and paperwork.

Price/cost shall be included in every source selection. This is not new, but it is now joined by two new requirements: past performance (over \$100,000) and quality. Environmental factors will also be included when appropriate.

EXCEPTION: The contracting officer does not have to use past performance as an evaluation factor if he/she documents the rationale in the contract file.

The main thrust here is to recognize that quality and past performance are every bit as important as price/cost.

If the contracting officer determines that there are other relevant factors that should be added, he or she may do so.

(15-605)

Evaluation Factors Other than Price-Related



Solicitations must state all significant evaluation factors and subfactors
Numerical weights (if used) maybe disclosed at agency discretion

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The solicitation should be structured to provide for the selection of the source whose proposal provides the greatest value to the Government.

Solicitations must state all significant evaluation factors and subfactors.

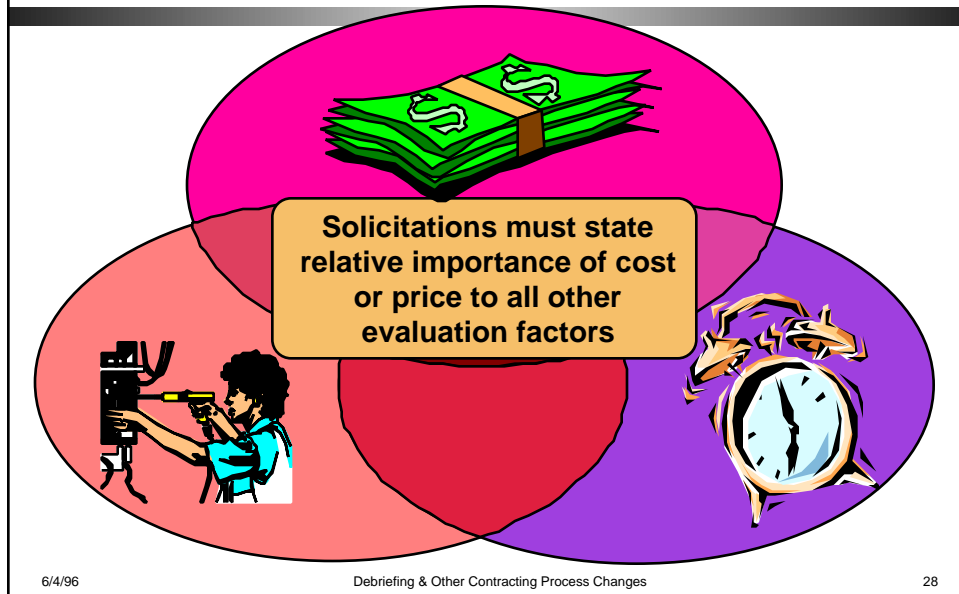
The new FAR language allows government agencies optional use of numerical weights. It also allows them to disclose these weights in the solicitation on a case-by-case basis.

Agencies may also state in the solicitation that the award will be made to the offeror that meets the minimum criteria for acceptable award at the lowest cost or price.

These changes are meant to give the contracting officer maximum flexibility and to shorten the procurement process.

(15.605)

Evaluation Factors - Relative Importance



The solicitation must also state whether price-related factors, taken as a whole, are significantly more important, approximately equal in importance or significantly less important than all non-price factors. One of those phrases must appear in the solicitation.

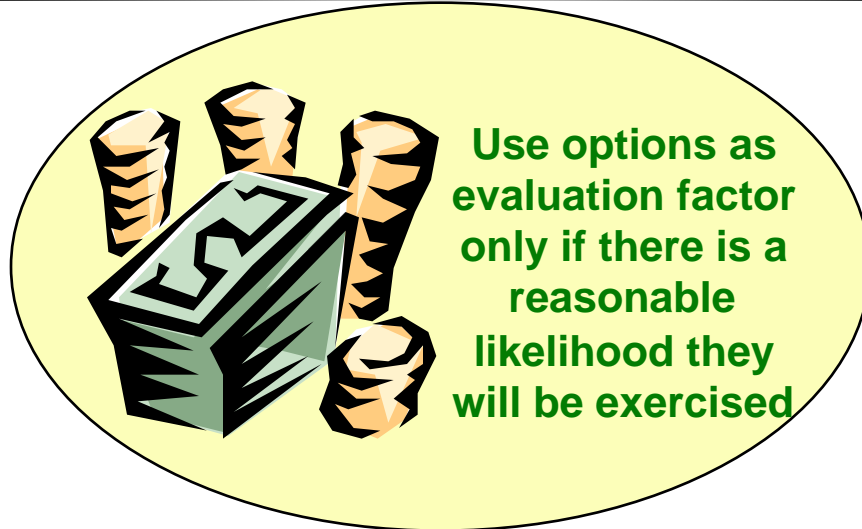
The solicitation may elaborate on the relative importance of all the other factors and subfactors.

All of this should be included in Section M, if the UCF is used, and **(52.212-2)** if dealing with a commercial item.

This language helps make the Government's evaluation plan crystal clear, thereby enhancing offeror understanding of the Government's needs.

(12.605)

Evaluation Factors - Options



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Debriefing & Other Contracting Process Changes

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This revision requires the contracting officer to make a deliberate determination to use options as an evaluation factor.

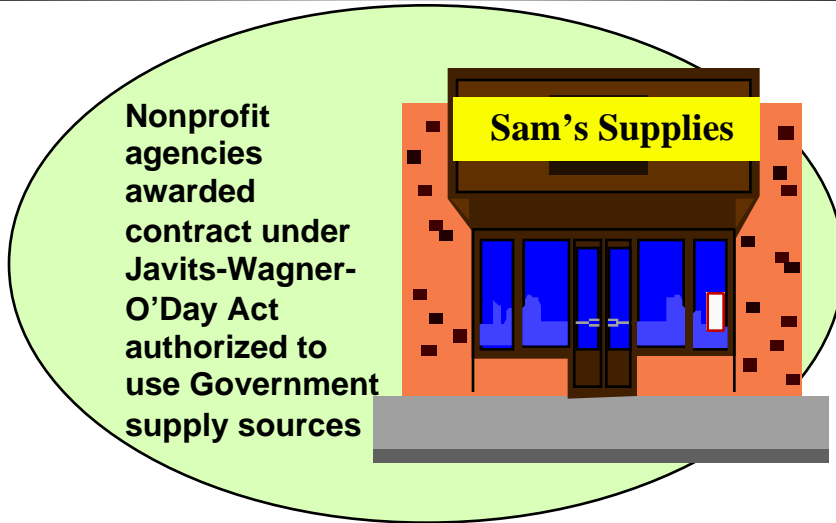
In sealed bidding, that required determination must be in writing.

This does not change the fact that price or cost must always be an evaluation factor in every source selection.

Small businesses had complained that priced options were not always exercised, thereby disrupting their business planning and causing them to waste resources.

(17.202 and 17.208)

Cooperative Purchasing - JWOD



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Debriefing & Other Contracting Process Changes

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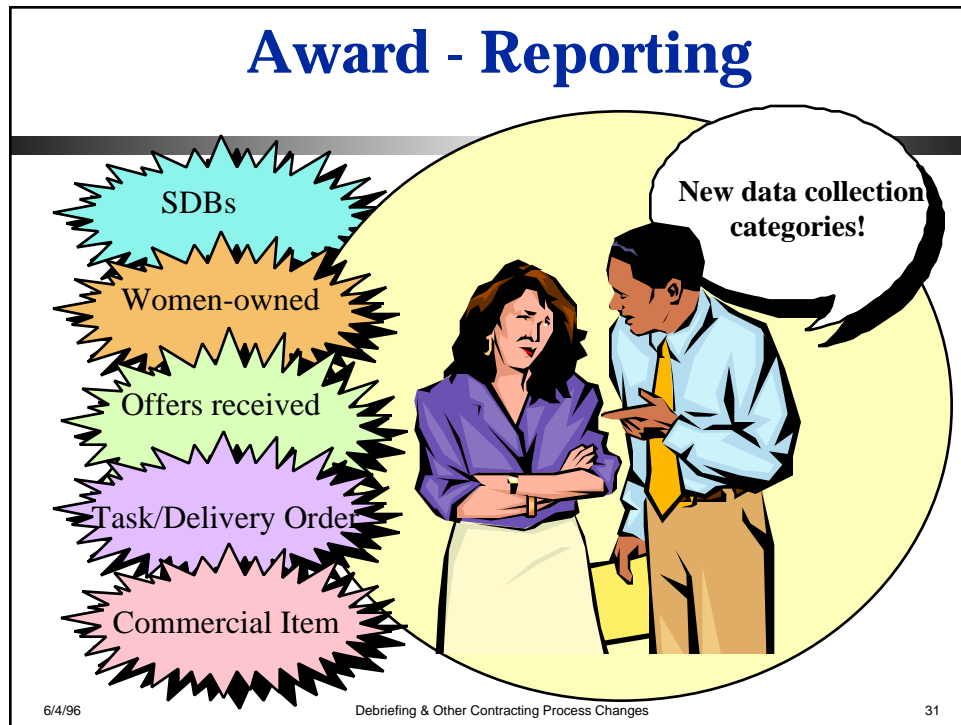
This, and the following slide, illustrate changes brought about by Congressional desire to support specific agencies or businesses .

Nonprofit agencies for the blind or severely disabled may use government supply sources in performing contracts under the Javits-Wagner-O'Day Act if the agency making the request is:

- Providing a commodity or service to the Government.
- providing an authorized commodity or service.

The overall effects are to lower the contract price and simplify the process.

(51.101)



This provision adds some new FPDS (Federal Procurement Data System) reporting requirements, specifically:

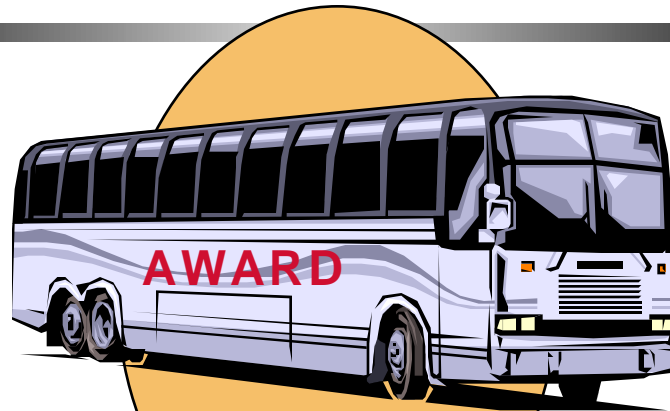
1. Awards to small disadvantaged businesses using either set-asides or full and open competition.
2. Business concerns owned and controlled by women.
3. Number of offers received in response to a solicitation.
4. Task order and delivery order contracts.
5. Contracts for acquisition of commercial items.

The forms used for the reporting (e.g. SF 279, FPDS, Individual Contract Action Report (over \$10,000), SF 281, FPDS, Summary Contract Actions of \$10,000 or less) are currently under revision.

Note: Also being revised - DD Form 350, Individual Contract Action Report and DD Form 1057, Monthly Contracting summary of Actions \$25,000 or less.

(4.601)

Summary



***More efficient and
effective process***

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Debriefing & Other Contracting Process Changes

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In summary, this rule addresses many different Congressional, industry and government concerns.

The changes benefit both the Government and industry, help to promote understanding and cooperation and ultimately make for a more efficient and effective process.

Practical Exercise



5 DAYS? - WOW!

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Debriefing & Other Contracting Process Changes

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Now for our practical application.

You will break down into your work groups. You will be given extracts of various acquisition documents. Using the information contained therein, you will prepare debriefings of both successful and unsuccessful offerors.

You will prepare to brief your product in plenary session.

Briefing Templates

Task #1 Debrief - Yes/No		
Angstrom		
Belle		
McDougall		
Skorenski		
USFlugenwerks		

Task #2 - Successful Offeror	
A.	
B.	
C.	
D.	
E.	
F.	

Task #3 - Unsuccessful Offerors	
A.	
B.	
C.	
D.	
E.	
F.	
G.	
H.	

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Suggested timeline:

- Read and discuss material 30 minutes
- Determine which debriefing requests to honor 5 minutes
- Outline debriefing for successful offeror 25 minutes
- Outline debriefings for unsuccessful offerors 40 minutes
- Develop/practice brief group solution 20 minutes

Use the templates provided to record your responses and outlines.

When the exercise is completed, we will return to the plenary session where work groups will brief solutions. The “school solution” will be discussed for the last 30 minutes of the session.